# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 11381 of 2005

**For Approval and Signature:**

**HON'BLE MR JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**BALVANTBHAI VALJIBHAI SHAH - Petitioner(s)**

**Versus**

**STATE OF GUJARAT & 2 - Respondent(s)**

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**Appearance :**

MR TRILOK J PATEL for Petitioner No(s).: 1.

MR MR MENGDEY AGP for Respondent No(s).: 1, 2.
MR SK BUKHARI for Respondent No(s).: 3.1. - 3.3.

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**CORAM : HON'BLE MR JUSTICE AKIL KURESHI**

**Date : 05/08/2005**

**ORAL JUDGMENT**

1.Rule. Learned AGP Shri M.R.Mengdey waives service of Rule on behalf of Respondent Nos.1 and 2. Learned Advocate Mr.S.K.Bukhari waives service of Rule on

behalf of Respondent Nos.3.1 to 3.3. At the joint request of learned advocates appearing for the parties, this petition is taken up for final disposal today.

2. In the present petition, the petitioner has challenged the order dated 1/2/1999 passed by Dy. Collector, Chhota Udepur in Fragment Case No.33/98. The petitioner has also challenged the order dated 21/5/2005 passed by the Additional Secretary (Appeals), Revenue Department, Govt. of Gujarat.

3. For a land bearing Survey No.14/1 of Village Kalki Taluka Jetpur-pavi admeasuring in 56 Are and 66 Sq. mtrs there were certain sale transactions which took place in the year 1968 and 1975 by which the land in question came to be sold by the predecessor in title of Respondent Nos.3.1 to 3.3 herein. The revenue authorities finding that the said transactions were opposed to the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act initiated proceedings under the provisions of the said Act and the Dy. Collector by his order dated 1/2/99 was pleased to declare the said transaction as being opposed to provisions of Section 7 and 8 of the said Act and was pleased to set aside the said transaction. The petitioners revision application to the Additional

Secretary came to be rejected by order dated 19/5/2005. It is not in dispute that the transactions which were inquired into by the Dy. Collector had taken place in the year 1968 and 1975. It is not in dispute that entries evidencing such transactions were recorded in the revenue records shortly after the transactions took place. It is not in dispute that the notice for the first time came to be issued taking cognizance of the alleged breach of the provisions of the said Act by the Dy. Collector in the year 1998. Thus, there was a gap of more than 20 years between the alleged offending sale transaction and the cognizance taken by the Dy. Collector under the provisions of the said Act. In a recent decision of a Division Bench of this Court reported in 2005 2 GLH page 34, it has been held that proceedings under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act cannot be initiated at a belated stage and the powers under Section 9 of the said Act have to be exercised within the reasonable time especially when parties have considerable opportunity to have known about the transaction.

4. Following the above decision, I find that the action of the revenue authorities cannot be sustained. The

initiation of the proceedings was grossly belated without any explanation for the delay. Revenue entries in the records were made at the relevant time and no reasons are forthcoming to explain initiation of the proceedings after inordinate delay. In the result petition is allowed, impugned order dated 1/2/1999 and 21/5/2005 passed by the Dy. Collector and Additional Secretary respectively are quashed and set aside. Rule is made absolute with no order as to costs.

(Akil Kureshi, J.)

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